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cause it does not in form comply with requirements of the constitution, and (2) because the subject matter, being temporary in character, is appropriate not for a constitutional provision but for a statute. *State ex rel. Halliburton v. Roach*, 130 S. W. 689 (Mo.).

There are undoubtedly many provisions in the state constitutions which, from the view-point of political science, belong properly in the field of legislative enactment. See 1 BRYCE, *AMERICAN COMMONWEALTH*, ch. 37. But if the principal case can be rested on the second ground, it seems to follow that such provisions, although formally made a part of the constitution, are really not such, and can be repealed by the legislature, a result for which hardly any one would contend.

CONSTITUTIONAL LAW⁷—SEPARATION OF POWERS—THE REFERENDUM.—The Wisconsin legislature passed a direct primary law and provided that it should go into effect only if ratified by a majority of the votes cast at the next general state election. *Held*, that the statute is constitutional. *State ex rel. Van Alstine v. Frear*, 142 Wis. 320. See NOTES, p. 141.

CONTRIBUTORY NEGLIGENCE—PERSONS UNDER DISABILITY—WHETHER MENTAL CAPACITY OF ADULT PERSON MAY BE CONSIDERED.—In an action against a street railway company for personal injuries alleged to have been caused by the defendant's negligence, the jury was instructed that in determining whether the plaintiff had been guilty of contributory negligence the fact that the plaintiff's mental capacity was less than that of the average adult person should be considered. *Held*, that the instruction is correct. *Howden v. Seattle Electric Co.*, 180 Fed. 487 (Circ. Ct., W. D. Wash.).

This decision is contrary to the universal rule that every adult, who is neither so insane nor so imbecile as to be utterly incapable of taking precautions, is held to the degree of care which is exercised by men of ordinary prudence under similar circumstances. *Davis, Adm'x v. Concord & Montreal R. Co.*, 68 N. H. 247; *Worthington & Co. v. Mencer*, 96 Ala. 310. The case is not in accord with the law as laid down by the state courts of Washington. See *Williams v. Ballard Lumber Co.*, 41 Wash. 338, 345. The opinion is based upon a case which is plainly distinguishable as involving only the question of a child's negligence. *Baltimore & Potomac R. Co. v. Cumberland*, 176 U. S. 232. A child's duty of care is not measured by the adult standard. In some cases the degree required is stated to be that which an ordinarily prudent child of the same age would exercise under similar circumstances. *Rolling Mill Co. v. Corrigan*, 46 Oh. St. 283. In other cases, the mental and physical maturity and capacity of the child, besides the age, have determined responsibility. *Illinois Iron & Metal Co. v. Weber*, 196 Ill. 526; *Western & Atlantic R. Co. v. Young*, 81 Ga. 397. Exactly what is the child's standard is thus an open question. But the adult standard takes no account of the personal equation, and the principal case seems clearly wrong.

CORPORATIONS—ACQUISITION OF MEMBERSHIP—EFFECT OF INSOLVENCY OF CORPORATION ON RIGHT TO RESCIND STOCK SUBSCRIPTION FRAUDULENTLY OBTAINED.—Certain persons were fraudulently induced to subscribe for stock in a banking corporation which shortly afterwards made an assignment for the benefit of creditors. In proceedings for the appointment of a receiver, these persons intervened with a petition that their contracts be rescinded. *Held*, that they may rescind. *Gress v. Knight*, 68 S. E. 834 (Ga.). See NOTES, p. 147.

CORPORATIONS—CAPITAL, STOCK, AND DIVIDENDS—STOCK ISSUED IN PAYMENT FOR OVERVALUED PROPERTY.—The stockholders of two corporations entered into an agreement of consolidation. Corporation X was to issue

\$2,500,000 of stock and give over \$1,000,000 cash in payment for \$1,000,000 par value of the stock of corporation Y. The exchange of stock was effected, and certificates issued for the \$1,000,000 cash. Suit was brought on some of these certificates. *Held*, that the contract of consolidation was against public policy and no agreement relating thereto will be enforced. *Strickland v. National Salt Co.*, 76 Atl. 1048 (N. J., Ct. Ch.).

In the absence of statute, an issue of watered stock is not illegal and void *per se*. *Scovill v. Thayer*, 105 U. S. 143, 153. Payment for stock may usually be made in property, and the exchange of shares in one corporation for those in another is one form of property payment. According to the "true value" rule, however, an overvaluation of the property leaves the stock unpaid to the extent of the overvaluation, and stockholders are liable to make up the deficiency in favor of creditors of the corporation. *Van Cleve v. Berkey*, 143 Mo. 109. Some courts insist that it is sufficient if there is good faith in the valuation of the property, and hold the stock valid even as against creditors. *Coffin v. Ransdell*, 110 Ind. 417. As between the corporation and the stockholders, there seems no good reason why any agreed valuation may not be accepted, provided there is no fraudulent concealment of facts. *Higgins v. Lansingh*, 154 Ill. 301. See *Lorillard v. Clyde*, 86 N. Y. 384. A previous New Jersey case did not question the validity of an agreement where fourteen shares of stock of the consolidated company were given in exchange for one share of one of the constituent companies. *Trenton Passenger Ry. Co. v. Wilson*, 55 N. J. Eq. 273.

CURTESY — HERITABLE ISSUE — LEGITIMATION BY SUBSEQUENT MARRIAGE. — The father of an illegitimate child married her mother and recognized the child as his daughter. Under the Virginia statute this rendered the child legitimate. No other issue was born to the parents. The mother was seised of an estate of inheritance, and died. *Held*, that the father is not entitled to curtesy. *Bond v. Bond*, 16 Va. L. Reg. 411 (Va., Circ. Ct., Pulaski Co.). See NOTES, p. 146.

DOWER — RIGHT OF DOWER IN MORTGAGED PROPERTY AFTER EXTINGUISHMENT OF MORTGAGE. — G and his wife, the plaintiff, made a joint and several bond to pay G's debt, and as security G gave a mortgage of land owned by him, the plaintiff renouncing her dower therein. Subsequently G conveyed the land in satisfaction of the mortgage. The present action was brought against the vendee to recover dower. *Held*, that the plaintiff is entitled to dower. *Gainey v. Anderson*, 68 S. E. 888 (S. C.).

Where a wife joins with her husband in a conveyance of his land, she is a party thereto only for the purpose of relinquishing her dower, which is regarded as a release of a contingent right incident to the principal conveyance, and continuing only so long as that exists. *Rickard v. Talbird*, Rice Eq. (S. C.) 158. If the mortgage is extinguished by operation of law, as when it is set aside as a fraud on creditors, the right of dower revests forthwith. *Munger v. Perkins*, 62 Wis. 499. The result is the same if the debt is satisfied by the mortgagor, or by his administrator after his decease. *Hastings v. Stevens*, 29 N. H. 564. Hence the case is correct in holding that the satisfaction of the mortgage debt by a transfer of the husband's equity of redemption revests the wife's right of dower. The result is a just one, since the wife is to be regarded as a surety for the husband's debt, and has been allowed to compel an application of the husband's share of the proceeds derived from a judicial sale of the property to the payment of the debt before resort is had to her interest. *Mandel v. McClave*, 46 Oh. St. 407.

ESTATES TAIL — STATUTORY CHANGES. — A statute provided that equitable estates tail and reversions and remainders expectant thereon could be barred